

NATIONAL LAW CENTER
ON HOMELESSNESS & POVERTY

Connecting Homeless Students to
Special Education Services:

*A Guide to
Rights and Resources*



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The National Law Center on Homelessness & Poverty is a registered 501(c)(3) non-profit organization. NLCHP serves as the legal arm of the national movement to alleviate, prevent, and end homelessness through impact litigation, public policy, and public education.

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THE REASONS FOR THIS BOOKLET . . .

UNDERSTANDING CHILDREN AND YOUTH WITH SPECIAL NEEDS

Many children and youth experience physical (e.g., blindness, speech problems) and learning disabilities (e.g., dyslexia) that may make it difficult for them to reach their full potential. However, schools can change classrooms and education plans to meet their unique needs, providing them the best possible opportunity to succeed.

THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA)

In 1975, Congress passed a federal special education law that was later called the Individuals with Disabilities Education Act (IDEA). IDEA allows students with disabilities to have their own Individualized Education Programs (IEPs) to meet their special needs.

HOMELESS STUDENTS WITH DISABILITIES FACE GREAT CHALLENGES

In 2000, the United States Department of Education reported that homeless students have trouble accessing special education services in at least half of the states. Changing schools frequently and not knowing their rights are two reasons that students in homeless situations may not receive the help they need in school.

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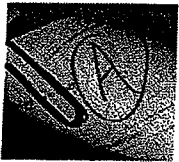


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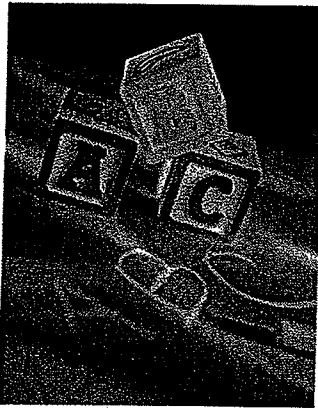
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Q & A: IDEA BASICS

Q: WHAT IS IDEA?

A: The Individuals with Disabilities Education Act (IDEA) is the main federal law guiding special education. Special education is specially-designed instruction to meet the needs of individual students. IDEA also allows for related services, which include transportation, speech or language therapy, physical therapy, psychological services, counseling, medical services, recreation, and other needed services. Schools must provide these services to those students who need them to benefit from a special education program.

Q: WHICH STUDENTS ARE COVERED UNDER IDEA?

A: IDEA protects all students who need special education and related services, including those who are homeless. Children suspected of having a disability also are protected. In order to benefit from special education, students must be between the ages of 3 and 21. However, IDEA does fund special services for some children beginning at birth.

Q: WHAT DISABILITIES ARE COVERED UNDER IDEA?

A: IDEA provides rights to students with various disabilities, including (but not limited to) the following:

- ◆ Mental retardation
- ◆ Hearing and vision impairments
- ◆ Speech and language problems
- ◆ Learning disabilities (*e.g.*, dyslexia)
- ◆ Emotional problems
- ◆ Autism

Q: WHO MAKES SPECIAL EDUCATION DECISIONS ?

A: Under IDEA, a parent must usually agree to have a student tested for a disability and parent agreement is required for participation in special education services. However, the law says the following people can be considered parents:

- ◆ Birth or natural parent
- ◆ Adoptive Parent
- ◆ Foster Parent
- ◆ Guardian
- ◆ A person who acts as a parent and has the student living in his or her home—possibly a grandparent or other relative
- ◆ A surrogate parent selected by the school district or a judge

Q: HOW DO STUDENTS GET INTO SPECIAL EDUCATION?

A: Schools and districts must follow IDEA's "child find" rule. This rule requires states to find all students with disabilities. In order to do so, schools should pay attention to all children, including those who are homeless, and look for problems with classroom performance and behavior that may suggest a disability. If there is a problem, schools should then reach out to a parent and suggest that the student be tested for a disability.

Q: WHAT IF I THINK A HOMELESS STUDENT HAS A DISABILITY BUT THE SCHOOL HAS NOT NOTICED?

A: If a parent or other helpful adult thinks a child or youth has a disability, he or she may want to talk to the child's teacher. A parent can also ask the school to do evaluations/tests. In doing so, a parent should do the following:

- ◆ Put the request in writing
- ◆ Put a date on the request
- ◆ Give a copy of the request to the school principal or guidance counselor

IDEA requires schools to provide all necessary tests. Schools will have to finish testing within 60 days unless the state has another rule in place. Ask the student's school or school district special education office if your state follows a different timeline.

Q: THE TESTS HAVE BEEN TAKEN; NOW WHAT?

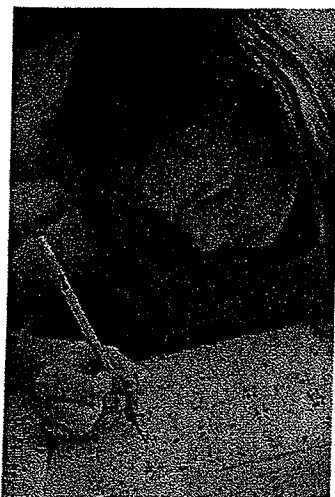
A: If the tests or evaluations show that the child may have a disability, the school should hold an IEP (Individualized Education Program) meeting. The meeting is a time to discuss test results, the educational needs of the student, and an IEP plan to address those needs. It should include a special education teacher, the student's regular education teacher, disability experts, a parent, and any lawyer or other advocate that the parent wants to bring along.

Q: WHAT IS IN THE IEP?

A: The IEP includes information about the class or classes in which the student will be placed. IEPs should ensure that students spend as much time as possible in classes and activities with regular education students. The IEP also may list other necessary services, such as transportation and specific therapy. Finally, the IEP must include educational goals and a list of ways to show that those goals are being reached.

Q: DO SCHOOLS EVER RETEST OR RECONSIDER IEPs?

A: Parents can ask for retesting at any time. If they do not ask, schools must retest every 3 years or after a shorter time if they believe it to be necessary. Schools and parents must review an IEP at least once a year or whenever they believe the child's special education needs have changed.



Q & A: BEYOND **IDEA BASICS**

Q: WHAT HAPPENS IF HOMELESSNESS CAUSES A STUDENT TO MOVE FREQUENTLY AND CHANGE SCHOOLS OFTEN?

A: Students who have been placed in special education have the right to receive similar services in each new school they attend. Youth, parents, and other helpful adults can help in this process by immediately informing new schools that the student was enrolled in special education at their old school. Sometimes, new schools will want to do new tests, hold new IEP meetings, and possibly create a new IEP. Parents still must be a part of these decisions.

Q: WHAT IF A STUDENT MOVES WHILE BEING TESTED AND BEFORE BEING PLACED IN SPECIAL EDUCATION?

A: If old schools have begun testing for special education, new schools

must finish the job. Both schools must finish their evaluations within 60 days unless the state has another timeline in place. New schools may ask parents for permission to extend the deadline, but parents must agree to any extensions. Schools also must make sufficient progress toward completing the testing. Parents, other helpful adults, and youth can help in this process by immediately informing new schools that the student was being considered for special education in the old school. Finally, parents should avoid extending a deadline if the student has been waiting a long time for services

Q: WHAT HAPPENS IF PARENTS FORGET TO TELL A SCHOOL ABOUT THEIR CHILD'S SPECIAL EDUCATION HISTORY? HOW WILL THE SCHOOL FIND OUT ABOUT IT?

A: IDEA and the federal McKinney-Vento homeless education law (see pages 13-14) require new schools to immediately request records from old schools. Old schools must immediately send those records to new schools. Those records should include any and all information about a student's special education needs.

Q: WHAT IF A STUDENT HAS DISCIPLINE PROBLEMS?

A: IDEA has discipline rules that apply when a special education student is suspended for more than 10 days. A student's IEP team

must meet and make a "manifestation determination," which is a judgment about whether the student's behavior was caused by his or her disability. If the behavior was a result of the disability, the student will not be suspended and the IEP team will change the IEP to better fit the needs of the student. However, there are exceptions to this rule—student behavior that involves drugs, weapons, or serious bodily injury can lead to suspensions of up to 45 school days even if this behavior is caused by a disability.

Q: WHAT HAPPENS TO STUDENTS WHOSE DISCIPLINE PROBLEMS ARE NOT CAUSED BY THEIR DISABILITIES?

A: Students who have behavior problems that were not caused by their disabilities can be suspended or expelled. Schools will apply the same rules to them as they apply to students in regular education. Parents have the right to appeal to a special education hearing officer if they disagree with the IEP team and believe that the behavior problems were caused by a disability.

Q: WHERE DO CHILDREN AND YOUTH GO WHEN THEY ARE SUSPENDED?

A: Schools must place suspended students in an alternative school, classroom, or other setting. Alternative settings are required to provide students with an education that helps them to reach the goals that are in their IEPs.

Q: HOW CAN UNACCOMPANIED YOUTH GAIN ACCESS TO SPECIAL EDUCATION?

A: Youth who are living on their own (e.g. in teen shelters or with friends) cannot enroll themselves in special education or request necessary evaluations or tests. If the youth is living with an adult who is acting in the role of a parent (perhaps a grandparent or the parent of a friend), that adult can agree to special education testing, placements, and services. Youth who do not have such adults in their lives should ask their school districts to appoint a "surrogate parent." Helpful adults such as local homeless liaisons, teachers, counselors, social workers, or youth program workers may also suggest that school districts appoint surrogates.

Q: WHO ARE THE SURROGATE PARENTS?

A: Surrogate parents can be individuals who know the youth, such as a family friend or relative. A surrogate also can be a member of the community who was previously unknown to the youth. Surrogates are selected by school districts and some communities require that they receive some training beforehand.

Q: HOW MUCH TIME DOES A DISTRICT HAVE TO RESPOND TO A REQUEST FOR SURROGATE PARENTS?

A: School districts should appoint a surrogate within 30 days.



Q & A: SPECIAL IDEA SERVICES

Q: IF A STUDENT MISSES A LOT OF SCHOOL DUE TO HOMELESSNESS, IS THERE ANY WAY THAT IDEA CAN HELP HIM/HER MAKE UP FOR LOST TIME?

A: The extended school year rule gives students the right to attend summer school if they need such services due to a disability and have it listed in their IEPs. Students in homeless situations often fall behind in school when they miss days due to their homelessness. An extended school year can help students with disabilities make up days they may have missed.

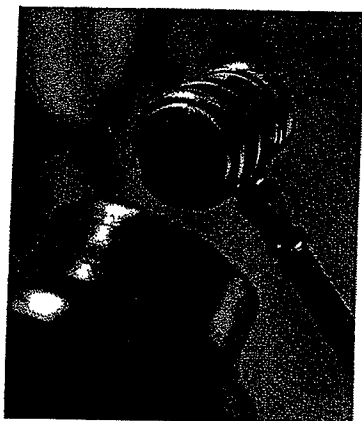
Q: CAN CHILDREN AND YOUTH WHO DO NOT HAVE DISABILITIES RECEIVE SERVICES UNDER IDEA?

A: Yes, some students can receive services that are aimed at preventing later placement in special education. These “early intervening” services may include tutoring and reading help. Such programs may be useful to homeless students who miss school due to

frequent moves. However, not all school districts participate in the early intervening services program. You should ask your school district's special education office if it offers such services.

Q: DOES IDEA HELP WITH TRANSPORTATION?

A: Although the federal McKinney-Vento homeless education law requires school districts to provide transportation in certain situations, getting to school is still a problem for some homeless students. IDEA requires that transportation be provided to those students who need such services due to a disability and have it listed in their IEPs.



Q & A: NON-COMPLIANCE
WITH IDEA

Q: WHAT IF A SCHOOL DOES NOT FOLLOW IDEA?

A: If a school does not evaluate a student, does not complete an IEP, does not provide appropriate services, or does not follow any other part of IDEA, parents should make the school aware of their concerns and potentially ask for a mediator (or outside person) to help

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them work out their problems with the school. If possible, parents should talk to an attorney or other advocate before asking for a mediator. If parents continue to be concerned, they can ask for a special education hearing. Schools and districts must provide parents with information about how to get started with this process.

Q: HOW DO I PREPARE FOR A HEARING?

Parents can and should ask attorneys to represent them at the hearing or seek advice and assistance from others who are knowledgeable about the process. In many communities, such services can be obtained free of charge. Information about connecting to these resources is available on the next page. If parents can not find assistance or want to prepare for a hearing on their own, they should:

- ◆ Read any information about hearings that the school or the school district special education office provides.
- ◆ Gather and review all of the student's education records.
- ◆ Write a short statement about why the school is wrong, ending with a list of things you now want the school to do—this will probably be a part of your hearing request.
- ◆ Prepare to tell the above information to a hearing officer.

Q: WHAT CAN I DO IF I WANT TO REVIEW THE SCHOOL'S RECORDS?

A: Parents who want to review student records in preparation for a hearing, or for any other reason, can simply ask the school to make the records available. Schools are required to allow parents to review those materials.

A decorative border of pencils surrounds the central text. The pencils are arranged in a rectangular frame, with some pointing inwards and others outwards.

NEED HELP?

The following resources are useful to those who believe that their school district is not following special education law and are thinking about requesting a special education hearing:

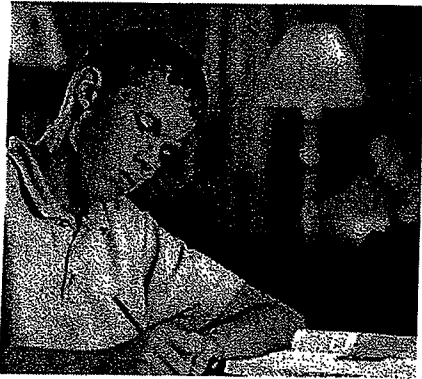
◆ Technical Assistance Alliance for Parent Centers:
Toll free assistance for special education questions and web-based listings of parent resource centers.

Phone: 1-888-248-0822
Website: www.taalliance.org

◆ Council of Parent Attorneys and Advocates (COPAA):

Organization of advocates who assist individuals with disability rights issues.

Website: www.copaa.org



OTHER USEFUL LAWS

In addition to IDEA, there are other federal laws that can help homeless students with disabilities:

- ◆ Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act guard the rights of students who face discrimination based on their disabilities. Both laws generally require that students be provided with a free appropriate public education, including special education. Unlike IDEA, they also apply to students with disabilities who require special accommodations (*e.g.*, wheelchair ramps), but not specialized instruction.
- ◆ The McKinney-Vento Homeless Assistance Act is the main federal homeless education law. It can be useful in preventing special education difficulties that result from unnecessary school transfers and enrolling in new schools. McKinney-Vento protects all students who do not have a fixed, regular, and adequate nighttime residence, such as those living in:
 - ⇒ Doubled-up housing with other families or friends
 - ⇒ Runaway/homeless youth shelters (even if parents invite the youth home)
 - ⇒ Hotels or motels

- ⇒ Shelters, including domestic violence shelters
- ⇒ Transitional housing shelters
- ⇒ Cars, abandoned buildings, parks, the streets, or other public spaces
- ⇒ Campgrounds or inadequate trailer homes

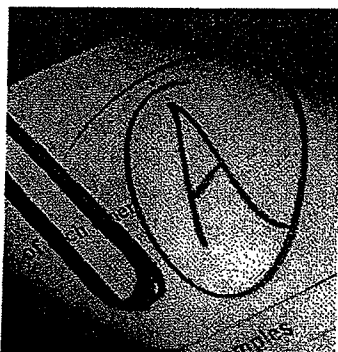
The McKinney-Vento Homeless Assistance Act requires states and school districts to ensure that students in homeless situations can attend and succeed in public school. Schools must immediately enroll students, even if they do not have proof of residency, school and immunization records, birth certificates, or other documents. Students also have the right to stay at their school even if their lack of housing forces them to move out of an attendance zone or a school district. Schools must provide necessary transportation.

Should you want to read the law...

The U.S. Department of Education has most federal education laws on its website (www.ed.gov). You may also refer to the Legal Information Institute to find statutes (www4.law.cornell.edu/uscode) and regulations (www4.law.cornell.edu/cfr).

Laws mentioned in this pamphlet are identified as follows:

- | | |
|------------------------|---|
| 1) IDEA: | 20 U.S.C 1400 (statute)
34 C.F.R 300 (regulations) |
| 2) McKinney-Vento Act: | 42 U.S.C 11431 (statute) |
| 3) Section 504: | 29 U.S.C 794 (statute)
34 C.F.R 104 (regulations) |
| 4) Title II: | 42 U.S.C 12131 |



FURTHER RESOURCES

To learn more about IDEA or special education, visit the following websites:

- ◆ **U.S. Department of Education, Office of Special Education and Rehabilitative Services (OSERS):**
www.ed.gov/about/offices/list/osers
- ◆ **Council for Exceptional Children:**
www.cec.sped.org
- ◆ **National Disability Rights Network (NDRN):**
www.ndrn.org
- ◆ **The EDLAW Center, Inc.:**
www.edlaw.net

To learn more about homeless education and related issues, visit the following websites:

- ◆ **The National Law Center on Homelessness & Poverty**
www.nlchp.org
- ◆ **The National Association for the Education of Homeless Children & Youth (NAEH CY)**
www.naehcy.org
- ◆ **The National Center for Homeless Education**
www.serve.org/nche

If you experience any problems with school enrollment or attendance of a child or youth experiencing homelessness, you should immediately call your school district and ask to speak to your local homeless coordinator. You also may contact your State Coordinator.

State Coordinators

ALABAMA
Dorothy Riggins
334-242-8199

DELAWARE
Joanne Miro
302-739-2767 x3284

IOWA
Ray Morley
515-281-3966

ALASKA
Sondra Meredith
907-465-8706

FLORIDA
Betty Applewhite
850-245-0709

KANSAS
No Contact Person
785-296-6714

ARIZONA
Mattie McVey
602-542-4963

GEORGIA
David Davidson
404-651-7555

KENTUCKY
Mary Marshall
502-564-3791

ARKANSAS
Susan Underwood
501-682-4847

HAWAII
Judy Tonda
808-394-1394

LOUISIANA
Deidre Kibbe
225-342-5688

CALIFORNIA
Leanne Wheeler
916-319-0383

IDAHO
Jan Byers
208-332-6953

MAINE
Shelley Reed
207-624-6637

COLORADO
Margie Milenkiewicz
303-866-6930

ILLINOIS
Rich DeHart
217-782-2948

MARYLAND
Walter E. Varner
410-767-0293

CONNECTICUT
Louis Tallarita
860-807-2058

INDIANA
Christina Endres
317-232-0548

MASSACHUSETTS
Peter Cirioni
781-338-6294

MICHIGAN Mike McGraw 517-241-8369	NEW YORK Patricia McGuirk 518-473-1236	SOUTH DAKOTA Laura Johnson Frame 605-773-2491
MINNESOTA Tom Gray 651-582-8282	NORTH CAROLINA Debra McHenry 919-807-3941	TENNESSEE Janice Routon 615-532-6314
MISSISSIPPI Gloria White Adams 601-359-3499	NORTH DAKOTA Ann Ellefson 701-328-2292	TEXAS Barbara James 512-475-8765
MISSOURI Amy James 573-522-8763	OHIO Thomas Dannis 614-466-4161	UTAH Kreig Kelley 801-538-7975
MONTANA Terry Teichrow 406-444-2036	OKLAHOMA Amy Davis 405-522-3251	VERMONT Wendy Ross 802-828-5148
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NEW HAMPSHIRE Lynda Thistle Elliott 603-271-3840	PUERTO RICO Esperanza Vega 787-759-8910 x210	WEST VIRGINIA Lisa Burton 304-558-8830
NEW JERSEY Danielle Anderson Thomas 609-984-4974	RHODE ISLAND Janice Stavros 401-222-4600 x2207	WISCONSIN Mary Maronek 608-261-6322
NEW MEXICO Joseph Sanchez 505-827-1805	SOUTH CAROLINA Brenda Myers 803-734-3215	WYOMING Carolee Buchanan 307-777-3562

You can make a difference in the lives of homeless children and families by becoming a member of the National Law Center on Homelessness & Poverty

You are invited to join the network of attorneys, students, advocates, activists and committed individuals who make up NLCHP's membership network. The network provides a forum for individuals, non-profits, and corporations to participate and learn more about using the law to advocate for solutions to homelessness.

NLCHP Members also receive the following benefits:

- ♦ Free electronic copies of NLCHP reports e-mailed when each report is released
- ♦ A free paper copy of NLCHP reports upon request
- ♦ 45% discount on registration for monthly NLCHP audio trainings
- ♦ 10% discount on registration for NLCHP conferences, forums, & workshops
- ♦ Access to NLCHP program attorneys and members through **members-only list serve** that will give you the opportunity to communicate with NLCHP staff attorneys and advocates from around the country, as well as:
 - NLCHP's monthly e-updates
 - Invitations to upcoming conferences and events.
 - Timely legislative action alerts.
 - Notice of internship and volunteer opportunities.

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or give us a call at (202) 638-2535.

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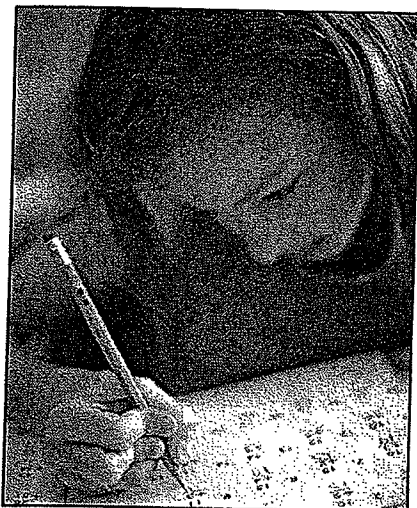
The Law Center publishes investigative reports, fact sheets and a monthly e-newsletter. Our work is cited in the press and is used by national policy makers and the general public. To receive a listing of our publications, including many works on the Education of Children and Youth Experiencing Homelessness, please contact us through the information below.

We would like to thank our Anonymous Donor, the Kellogg Foundation, the Freddie Mac Foundation and the Butler Family Fund for their support of our work with children in homeless situations.

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Individuals with Disabilities Education Improvement Act (IDEA) of 2004 Provisions for Children and Youth with Disabilities Who Experience Homelessness



Over 1.35 million children and youth experience homelessness each year (Burt & Laudan, 2000). These children and youth face educational challenges that include a lack of basic necessities (food, clothing, medical services), discontinuity of education due to mobility, and trauma caused by the chaos, poverty, and instability of their family's circumstances or, in the case of unaccompanied youth, their own circumstances.

Children and youth who are homeless face additional educational challenges when they have disabilities. Studies indicate that children who are homeless are twice as likely to have learning disabilities and three times as likely to have an emotional disturbance as children who are not homeless (Better Homes Fund, 1999).

Yet children and youth who are homeless and have disabilities may not receive the special education services for which they are eligible. In 2000, 50 percent of states reported that children and youth who are homeless experienced difficulties accessing special education programs (U.S. Department of Education, 2000). Barriers to access these children and youth face include:

- ❑ *Not being identified as needing special education services.*
- ❑ *Difficulty with diagnosis due to mobility and other stressors.*
- ❑ *Lack of timely assessment, diagnosis, or service provision.*
- ❑ *Lack of continuity of services due to school transfers.*
- ❑ *Lack of timely or efficient records transfer when enrolling in a new school.*
- ❑ *Lack of an available parent or surrogate to represent the child or unaccompanied youth.*

Federal Response

Two federal laws that address the needs of children and youth in homeless situations who have disabilities are the McKinney-Vento Homeless Education Assistance Improvements Act and the Individuals with Disabilities Education Improvement Act (IDEA).

The McKinney-Vento Homeless Education Assistance Improvements Act: The McKinney-Vento Act, reauthorized in 2002 as part of the No Child Left Behind Act, ensures access to a free, appropriate public education (FAPE) for children experiencing homelessness.

The McKinney-Vento Act mandates:

- ❑ *Immediate school enrollment and full participation in educational activities, even when records normally required for enrollment are not available. [Sec. 722(g)(3)(C)]*
- ❑ *The right of children and youth experiencing homelessness to remain in their school of origin (school last attended when permanently housed or in which last enrolled). [Sec. 722(g)(3)(A)]*

Who is homeless?

(McKinney-Vento Homeless Assistance Act of 2001 – Title X, Part C of the No Child Left Behind Act – Sec 725)

The term "homeless children and youth"—

- (A) *means individuals who lack a fixed, regular, and adequate nighttime residence... and*
- (B) *includes—*
 - (i) *children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or similar reason; are living in motels, hotels, trailer parks, or camping grounds due the lack of alternative accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;*
 - (ii) *children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings...*
 - (iii) *children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus train stations, or similar settings; and*
 - (iv) *migratory children who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described in clauses (i) through (iii).*

- ❑ *Transportation to the school of origin. [Sec. 722(g)(1)(J)(iii)]*
- ❑ *Access to programs and services including special education services, preschool services, free school meals, Title I services, services for English language learners, vocational/technical education, gifted and talented services, and before- and after-school care. [Sec. 722(g)(4)]*
- ❑ *The appointment of a local homeless education liaison in every school district to ensure that homeless children and youth are identified and given full and equal opportunity to receive all educational services for which they are eligible in order to succeed in school. [Sec. 722 (g)(6)(A)]*

Who has a disability?

[Individuals with Disabilities Education Improvement Act Part A, Sec. 602(3)]

(A) In general.—The term ‘child with a disability’ means a child—

(i) with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to in this title as ‘emotional disturbance’), orthopaedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and who, by reason thereof, needs special education and related services.

(B) Child aged 3 through 9.—The term ‘child with a disability’ for a child aged 3 through 9 (or any subset of that age range, including ages 3 through 5), may, at the discretion of the State and local educational agency, include a child—

(i) experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in 1 or more of the following areas: physical development; cognitive development; communication development; social or emotional development; and
(ii) who, by reason thereof, needs special education and related services.

The Individuals with Disabilities Education Improvement Act: The purpose of IDEA, amended in 2004, is to ensure that all children with disabilities receive FAPE, including special education and related services to prepare them for further education, employment, and independent living [Part A, Sec. 601(d)(1)(A)]. Special education is defined as specially designed instruction, provided at no cost to the parents, to meet the unique needs of a child with a disability [Part A, Sec. 602(29)].

To be eligible, the child must have a disability and require specialized instruction to benefit from school. Special education instruction may take place in the general education classroom, special education classroom, specialized school, home, hospitals, and institutions [Part A, Sec. 602(29)(A)] and may include academic or behavioral support, speech and language pathology services, vocational education, and many other services. Related services may include transportation, physical therapy, psychological services, social work services, and counselling. Also included are certain medical services, parent counselling and training, recreation, and other support services if students need them to benefit from a special education program [Part A, Sec. 602(26)]. Eligibility and services are determined through evaluation and the development of an Individual Education Plan (IEP) [Part A, Sec. 614(d)]. Students who have not graduated from high school are eligible through age 21 [Part A, Sec. 612(a)(1)(A)]. Services are available to individuals with disabilities beginning at birth through Part C, Infants and Toddlers. Children under three are served under an Individualized Family Services Plan (IFSP) [Part C, Sec. 636].

Federal Guarantees for Children Who are Homeless and Have Disabilities

The McKinney-Vento Act and IDEA mandate protections and services for children and youth who are homeless and children and youth with disabilities. Moreover, both the McKinney-Vento Act and IDEA address serving children and youth who are homeless and have disabilities, ensuring that their complex and unique needs are met.

In reviewing the needs of children and youth who are homeless and have disabilities, program coordinators should bring to bear the full range of both laws to optimize the educational access and success of these children. It is important to note that the two laws do not operate exclusively of one another, nor does one law supersede the other.

The 2004 reauthorization of IDEA in particular includes amendments that reinforce the timely assessment, appropriate service provision and placement, and continuity of services for children and youth with disabilities who experience homelessness and high mobility. Coordination and compliance with the McKinney-Vento Act are specifically mandated. The general requirements for FAPE, evaluations, and IEPs are unchanged.

Following is a listing of the amendments in the reauthorized IDEA, pointing out the changes from prior law.

Definitions

- ❑ IDEA now contains a definition of homeless children, to include any children or youth considered homeless under McKinney-Vento.ⁱ
- ❑ The definition of parent has been changed, so that the statute now contains virtually the same definition that the federal regulations have contained since 1999. "Parents," for the purpose of special education, include biological, adoptive or foster parents, guardians, surrogate parents, individuals legally responsible for the child's welfare, or individuals acting in the place of a parent and with whom the child lives (specifically including grandparents, stepparents or other relatives).ⁱⁱ
- ❑ IDEA now contains a definition of "ward of the state."ⁱⁱⁱ

Identification

- ❑ The Child Find requirements in the statute now include a specific requirement that states ensure that children with disabilities experiencing homelessness are identified, located, and evaluated. (This requirement has been in federal regulations since 1999.^{iv})

Coordination/Compliance with McKinney-Vento

- ❑ Any state receiving IDEA funds must ensure that the requirements of the McKinney-Vento Act are met for all children with disabilities in homeless situations in the state.^v
- ❑ IDEA requires every state receiving IDEA funds to maintain a State Advisory Panel to advise the state education agency (SEA) on unmet needs in the state, to comment publicly on proposed rules and regulations, to advise the SEA on self-evaluation, data reporting and ensuring compliance, and to improve service coordination. IDEA now requires states to include state and local McKinney-Vento personnel on the Panel, as well as a representative of the state child welfare agency responsible for foster care.^{vi}

Evaluations and IEPs

- ❑ IDEA now requires school districts or local education agencies (LEAs) to complete initial evaluations within 60 days of a parent's request, or within time frames established by the state.^{vii}
- ❑ IDEA now specifically requires LEAs to ensure that assessments of children who change LEAs during the school year are coordinated with prior schools "as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations."^{viii}
- ❑ If a child changes LEAs while the evaluations are pending, IDEA specifically states that the standard time frame does not apply, but ONLY IF the new LEA "is making sufficient progress to ensure a prompt completion of the evaluation, AND the parent and LEA agree to a specific time when the evaluation will be completed."^{ix}
- ❑ When children with current IEPs change LEAs during the school year, the new LEA is now specifically required to provide the children with FAPE immediately, "including services comparable to those described" in the previous IEP, in consultation with the parents. The

LEA can then either adopt the old IEP or implement a new IEP. If the LEA is in a new state, the LEA can conduct a new evaluation, if determined necessary, and develop a new IEP.^x

- ❑ To facilitate provision of FAPE for children who change LEAs during the school year, IDEA now specifically requires enrolling schools to promptly obtain the child's records from the previous school, and previous schools to promptly respond to such records requests.^{xi}

Unaccompanied Youth

- ❑ For unaccompanied youth, IDEA specifically requires LEAs to appoint surrogate parents, and to make reasonable efforts to complete the appointment process within 30 days.^{xii} In its report, Congress specified that staff members of emergency shelters, transitional shelters, independent living programs, and street outreach programs can serve as temporary surrogate parents for unaccompanied youth, when appropriate.^{xiii}
- ❑ For wards of the state, IDEA now does not require an LEA to obtain parental consent for an initial evaluation, if the LEA cannot find the parent, the parent's rights have been terminated, or a judge has removed the parent's educational decision-making rights and appointed another person to represent the child.^{xiv}
- ❑ For wards of the state, IDEA now explicitly permits judges to appoint surrogate parents.^{xv}

Services

- ❑ IDEA now allows LEAs to use up to 15% of their grants to develop and implement programs to intervene with K-12 students who have not been found eligible for special education but who need additional academic and behavioral support, with an emphasis on primary grades.^{xvi} (This provision should assist children experiencing homelessness with overcoming barriers to accessing services expeditiously.)

Resolution of Disputes

- ❑ When requesting a mediation or due process hearing under IDEA, families and youth experiencing homelessness do not need to provide a residence address; only available contact information is required.^{xvii}

Infants and Toddlers: Part C

- ❑ Any state receiving a Part C grant must make early intervention services available to infants and toddlers with disabilities who are homeless and their families.^{xviii}
- ❑ States must ensure that appropriate early intervention services using scientifically based research are available, to the extent practicable, to infants and toddlers with disabilities who are homeless and their families.^{xix}
- ❑ States must ensure the meaningful involvement of homeless families and wards of the state in the planning and implementation of the Part C program.^{xx}
- ❑ In the report accompanying Part C, Congress stated that states should conduct public awareness programs about the Part C program in homeless family shelters, health service offices, public schools and the child welfare system.^{xxi}
- ❑ Any state receiving a Part C grant must establish a State Interagency Coordinating Council, which must include a representative of the State McKinney-Vento Coordinator and the state child welfare agency responsible for foster care.^{xxii}

National Partners in Homeless Education

The National Center for Homeless Education (NCHE)

Contact: Diana Bowman, Director, 800-755-3277, dbowman@serve.org

Web Address: www.serve.org/nche

NCHE, funded by the U.S. Department of Education, is a national resource center, providing valuable information, training, and materials to educators and community members seeking to address the educational needs of homeless children and their families. These materials are made available to the public at no charge and include such items as educational rights posters, parent packs, training resources, and "law into practice" briefs.

U.S. Department of Education, Education for Homeless Children and Youth Program

Contact: Gary Rutkin, Coordinator, 202-260-4412, gary.rutkin@ed.gov

Web Address: www.ed.gov/programs/homeless/index.html

The Education for Homeless Children and Youth Program oversees the education of homeless children and youth in our nation's public schools, including the granting of McKinney-Vento funds and the monitoring of their usage. Program Coordinator Gary Rutkin, working with other Department officials and national partners, provides official guidance to states and school districts on implementing the McKinney-Vento Homeless Assistance Act.

The National Association for the Education of Homeless Children and Youth (NAEHCY)

Contact: Patricia Popp, President, 757-221-7776, ppopp@naehcy.org

Web Address: www.naehcy.org

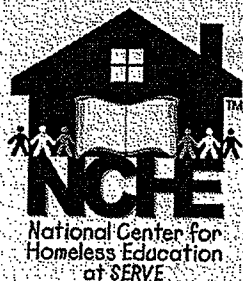
NAEHCY, a national grassroots membership association, serves as the voice and the social conscience for the education of children and youth in homeless situations. NAEHCY brings together educators, parents, advocates, researchers and service providers to ensure school enrollment and attendance, and overall success for children and youth experiencing homelessness. NAEHCY accomplishes this through advocacy, partnerships and education. NAEHCY also hosts an annual national conference on homeless education, which brings together educators and service providers to learn about new developments within the field.

The National Law Center on Homelessness and Poverty (NLCHP)

Contact: Joy Moses, Education Staff Attorney, 202-638-2535, jmoses@nlchp.org

Web Address: www.nlchp.org

The mission of NLCHP is to prevent and end homelessness by serving as the legal arm of the nationwide movement to end homelessness. To achieve its mission, the Law Center pursues three main strategies: impact litigation, policy advocacy, and public education. The Law Center strives to place homelessness in the larger context of poverty. By taking this approach, the Law Center aims to address homelessness as a very visible manifestation of deeper causes: the shortage of affordable housing, insufficient income, and inadequate social services. NLCHP provides guidance and produces high-quality publications on legal issues pertaining to homelessness and poverty.



P.O. Box 5367
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Toll-free helpline: 1-800-308-2145
www.serve.org/nche



For more information on educating students with disabilities that are experiencing homelessness, visit http://www.serve.org/nche/ibt/sc_spec_ed.php.

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